

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT McDONEL,

Petitioner,

v.

Criminal Case Number 07-20189

Civil Case Number 12-11205

Honorable David M. Lawson

UNITED STATES OF AMERICA,

Respondent.

_____/

ORDER DENYING MOTION FOR A CERTIFICATE OF APPEALABILITY

The petitioner filed a motion to vacate his sentence under 28 U.S.C. § 2255 on March 16, 2012 and an amended motion on November 18, 2014. The Court filed an opinion and order on March 25, 2015 determining that the petitioner's motions were untimely and he was not entitled to equitable tolling. On that basis, the Court denied the petitioner's motion and entered judgment.

Pursuant to Rule 11 of the Rules Governing Section 2255 Proceedings, which was amended as of December 1, 2009:

The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

Rule 11, Rules Governing Section 2255 Proceedings.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). To receive a certificate of appealability, "a

petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted).

The Court now concludes that reasonable jurists could not debate whether the petitioner filed his motions after the period of limitation or whether the petitioner is entitled to equitable tolling. The Court therefore will deny a certificate of appealability.

Accordingly, it is **ORDERED** that a certificate of appealability is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: March 25, 2015

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 25, 2015.

s/Susan Pinkowski
SUSAN PINKOWSKI